STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2020AP1014-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER D. WILSON,

Defendant-Appellant.

On Appeal from an Oral Order Denying Defendant's Suppression Motion Entered in the Milwaukee County Circuit Court, the Honorable Jean M. Kies, Presiding, and a Judgment of Conviction, the Honorable David Borowski, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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CONSTITUTIONAL PROVISIONS AND STATUTES CITED

ISSUE PRESENTED

1. Whether the police violated Mr. Wilson's Fourth Amendment rights by entering the curtilage of his home without both probable cause for arrest and exigent circumstances.

The circuit court found that the police did not violate Mr. Wilson's right because they had probable cause to believe he had committed a jailable offense and their entry was justified by the exigency of hot pursuit.

POSITION ON ORAL ARGUMENT AND PUBLICATION

This case is a misdemeanor and is therefore a one-judge case that is not eligible for publication under Wis. Stat. §§ 752.31(2)(f) and 809.23(1)(b).

While Mr. Wilson does not request oral argument, he welcomes the opportunity to argue the case should the court believe that oral argument would be of assistance to its resolution of the matter.

STATEMENT OF THE CASE

On August 14, 2017, Christopher D. Wilson was charged with one count of operating a motor vehicle while intoxicated (2nd offense), contrary to Wis. Stat. §§ 346.63(1)(a), 346.65(2)(am)2., one count of endangering safety by use of a dangerous weapon while under the influence of an intoxicant, contrary to Wis. Stat. § 941.20(1)(b), and one count of

possession of a prescription drug without a prescription, contrary to Wis. Stat. §§ 450.11(7)(h) and 450.11(9)(a). (1). All three charges were based on an incident that took place on January 16, 2017. (1).

On March 7, 2018, Mr. Wilson filed a motion to suppress all evidence derived from his unlawful seizure on the date of the offense. (8). The motion was heard by the Honorable Jean M. Kies on July 6, 2018. (42). It was denied for reasons stated on the record on August 31, 2018. (43).

On May 23, 2019, Mr. Wilson pleaded guilty to counts one and two, and count three was dismissed and read in. (24; 41). According to the state, Mr. Wilson performed poorly on his field sobriety tests, and his blood test came back positive for methadone and alprazolam. (41:9).

He was sentenced by the Honorable David Borowski to ninety days in jail on count one and four months in jail on count two, concurrent with one another. (*Id.*). He filed a timely notice of intent, and this appeal follows. (25; 33).

STATEMENT OF FACTS

On January 16, 2017, at 1:43 p.m., Christopher Wilson was alone in his garage when the police knocked on the garage's side door—to be distinguished from the overhead door, which is on a different wall than the side door and parallel to it. (43:9; App. 111). The garage is detached from the main house, and the only access to the side door is through the backyard, which is enclosed by a tall,

solid privacy fence. (42:14,21; App. 138, 145). The police parked in the alley behind Mr. Wilson's home, entered his fenced-in backyard, knocked on the side door of his garage, and asked him nine questions about his driving and drug or alcohol use before asking him if he lived at that house. (50 at 00:00 to 02:05).

At the time of their contact with him, the overhead door was shut, and Mr. Wilson's SUV sat idling just outside of the garage door, parked in a way that did not obstruct traffic in the alleyway. (50 at 17:30; App. 181). The police officers at the scene initially responded to the site of Mr. Wilson's car based on a reckless driving tip. (42:17; App. 141). The caller told the officer that the car was "all over the roadway … changing speeds" and "driving very erratically." (42:13; App. 137). The caller followed the car to its parking spot in the alley behind 1426 Missouri Avenue where a white male wearing bright orange shoes exited the car, reached over the fence to unlatch the door, and then entered the backyard. (42:13-14; App. 137-38; 43:4-5; App. 106-07). The officer ran the car's plates and saw that it listed to an address in Franklin. (42:12; App. 136). The officer testified that, "[a]t that point in time" he believed "that this was possibly an OWI and possibly a burglary," and based on that dual possibility, he decided it was necessary to enter the fenced-in backyard. (42:14; App. 136).

He knocked on the side door to the garage and spoke with Mr. Wilson. The officer told Mr. Wilson that someone had reported him for "driving kinda' goofy" and "[blowing] through a red light." (50 at

00:50-02:10). The officer asked Mr. Wilson if he had had anything to drink, if he had smoked marijuana, and if he had taken any pills or heroin, before asking him whether he lived at that address, to which Mr. Wilson answered, "yes." (*Id.*).

The two spoke further about Mr. Wilson's driving, and after about another minute, Mr. Wilson led the officer back to his car to retrieve his ID card. (50 at 03:00 to 03:20). Once at the car, Mr. Wilson attempted to open the passenger side door, which was locked, and "[a]t that point in time, [the officer] believed that Mr. Wilson was possibly impaired." (42:16; App. 140). The officer saw a handgun inside the car and patted Mr. Wilson down. (43:7; App. 109). During the pat down, Mr. Wilson told the officer that he had been driving the SUV and the officers placed Mr. Wilson under arrest for operating while intoxicated. (43:7; App. 109).

Mr. Wilson moved to suppress "all statements, physical evidence, blood samples, and any observations obtained by police that were derived from a warrantless seizure that took place within the curtilage" of his home. (8:1). The circuit court denied Mr. Wilson's motion. (43). It concluded that the warrantless entry into Mr. Wilson's backyard was "justified by exigent circumstances of a hot pursuit of a fleeing suspect who had committed jailable offenses." (43:8; App. 110). According to the circuit court, "[t]he officer and his partner performed a limited entry into the backyard area and knocked on the garage door" in order to "prevent the continued flight under the circumstances, and the officer's actions were constitutionally reasonable." (43:9; App.

111). The court found that the officers' actions were proper and that "there were exigent circumstances that suggest that Mr. Wilson was trying to evade capture." (43:19; App. 121). The court went on to say, "I can't reward you for jumping over the fence." (43:19; App. 121). This appeal follows. (33).

ARGUMENT

I. The police violated Mr. Wilson's Fourth Amendment rights by entering the curtilage of his home without probable cause for arrest and exigent circumstances.

A. Legal principles and standard of review.

The Fourth Amendment to the United States Constitution guarantees people the right to be free from unreasonable searches and seizures. The physical entry of the home "is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (internal quotation omitted). Among other things, the Fourth Amendment prohibits police from making a warrantless and nonconsensual entry into a suspect's home to arrest the suspect, absent probable cause and exigent circumstances. *Payton*, 445 U.S. at 576.

The Fourth Amendment protections that attach to the home also attach to "the land immediately surrounding and associated with the home." *Oliver v. United States*, 466 U.S. 170, 180 (1984). This area is referred to as the curtilage. The Fourth Amendment

prohibits a warrantless entry into the curtilage of a home unless it is supported by probable cause and exigent circumstances. *State v. Weber*, 2016 WI 96, ¶ 19, 372 Wis. 2d 202, 887 N.W.2d 554; *State v. Dumstrey*, 2016 WI 3, ¶ 21, 366 Wis. 2d 64, 873 N.W.2d 502. Where an unlawful search or seizure occurs, the remedy is to suppress the evidence produced. *State v. Carroll*, 2010 WI 8, ¶ 19, 322 Wis. 2d 299, 778 N.W.2d 1; *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

Whether police conduct violated the constitutional guarantee against unreasonable searches and seizures is a question of constitutional fact. *State v. Griffith*, 2000 WI 72, ¶ 23, 236 Wis. 2d 48, 613 N.W.2d 72. Questions of constitutional fact are subject to a two-step standard of review. *Id*. This court must uphold a circuit court's findings of historic fact unless they are clearly erroneous. *State v. Fonte*, 2005 WI 77, ¶ 11, 281 Wis. 2d 654, 698 N.W.2d 594. It must then "apply the constitutional principles to the facts at hand to answer the question of law." *Dumstrey*, 366 Wis. 2d 64, ¶ 13.

B. The police seized Mr. Wilson to conduct an investigatory stop on him.

This case involves a seizure, not a search. The conduct in question is the officer's entrance into Mr. Wilson's enclosed backyard in order to conduct an investigatory stop. Once in the backyard, the officer knocked on Mr. Wilson's garage side door and spoke to Mr. Wilson for a couple of minutes before Mr. Wilson and the officers walk to the alley together. Aside from the investigatory stop, there was no

additional search conducted in the backyard. A visual observation in the context of an investigatory stop "does not constitute an independent search because it produces no additional invasion of the suspect's privacy interest." *Dumstrey*, 366 Wis. 2d 64, ¶ 19; *see also United States v. Jones*, 565 U.S. 400, 410 (2012) (acknowledging that "mere visual observation does not constitute a search").

Thus, the action in question in this case is the officer's decision to enter the enclosed backyard and knock on the garage's side door in order to advance his investigation. As argued below, the officer's actions were improper because they were not supported by probable cause and exigent circumstance. *See Weber*, 372 Wis. 2d 202, ¶19; *Dumstrey*, 366 Wis. 2d 64, ¶ 21.

C. The seizure took place in the curtilage of Mr. Wilson's home.

The area in question in this case is not the detached garage per se but the fenced-in backyard in which the side door for the garage is located. The following four-factor test is used to determine whether the area in question is properly considered curtilage:

> [T]he proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

State v. Martwick, 2000 WI 5, ¶ 30, 231 Wis. 2d 801, 604 N.W.2d 552 (*quoting United States v. Dunn*, 480 U.S. 294, 301 (1987)).

This test is not a mechanical or "finely tuned formula," rather, the factors are "useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration," whether the area in question "is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection." *Dumstrey*, 366 Wis. 2d 64, ¶ 32 (*quoting Dunn*, 480 U.S. at 301) (internal quotation omitted).

The trespass in this case occurred in a small, fenced-in yard, which is one of the prototypical forms of curtilage. *See State v. Walker*, 154 Wis. 2d 158, 184, 453 N.W.2d 127 (1990), *abrogated in part, on other ground, by State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775 (holding that "it is obvious that Walker's fenced-in backyard falls within the curtilage of his home"); *see also United States v. Sweeney*, 821 F.3d 893, 901 (7th Cir. 2016) (listing a "porch, a small fenced-in yard, a gated walkway along the side of a house" as obvious examples of curtilage).

In addition, all four factors from *Dunn* weigh in favor of a finding of curtilage in this case. *Dunn* involved a barn located within a ranch that was entirely surrounded by a ranch-style fence. *Dunn*, 480 U.S. at 294. The facts from *Dunn* provide a useful exercise in this curtilage evaluation.

Proximity. In *Dunn*, the Court found that the area was 180 feet from the home and that such a substantial distance did not support an "inference

that the barn should be treated as an adjunct of the house." *Dunn*, 480 U.S. at 302. Here, the distance between the garage and the house appears to be about 10-15 feet. (50 at 00:26-00:50; *see*, *e.g.,* App. 180).

Enclosure (surrounding home). The enclosure factor also weighs in favor of curtilage in this case. In *Dunn*, the Court held that, in contrast to the perimeter fence, an interior fence that surrounds the home is a "significant" factor in determining the curtilage. *Dunn*, 480 U.S. at 302.

Nature of uses. The third factor also weighs in favor of curtilage. There is no indication in the record that this small, fenced-in backyard was used for anything other than personal and familial activities tied intimately to the home. The officer's body cam video shows children's toys, a child's car, and lawn chairs leaning against the porch. In contrast, in *Dunn*, law enforcement had evidence that "showed a truck apparently delivering chemicals to the barn, and the officers detected a strong chemical odor emanating from the barn itself." *Dunn*, 480 U.S. at 302–03.

Visibility. Finally, the fourth factor also weighs in favor of curtilage. The small backyard is entirely fenced-in by a tall privacy fence that does not allow passers-by to look inside. In *Dunn*, the Court pointed out that the chain link fences were used to corral livestock rather than block visibility. *Dunn*, 480 U.S. at 303.

All four factors weigh in favor of a finding that the area in question was in the curtilage of the home.

D. At the moment they entered the curtilage of Mr. Wilson's home, the police lacked probable cause to arrest Mr. Wilson for a jailable offense.

The extent to which law enforcement is permitted to rely on exigent circumstances for a warrantless entry of a home has a relationship to the seriousness of the offense. *State v. Ferguson*, 2009 WI 50, ¶ 25, 317 Wis. 2d 586, 767 N.W.2d 187.

> Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. *See Payton v. New York*, [445 U.S. at 586]. When the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.

Welsh v. Wisconsin, 466 U.S. 740, 750 (1984).

The general presumption that police conduct accompanied by probable cause is reasonable is diminished when the underlying offense is minor. *Ferguson*, 317 Wis. 2d 586, ¶ 25. Where the underlying offense is a noncriminal, civil forfeiture offense for which no imprisonment is possible, exigent circumstances will rarely, if ever, be present. *Id.*, ¶ 27 (*citing Welsh*, 466 U.S. at 754). Therefore, in order to justify a warrantless entry into the curtilage of a man's home for the purposes of a probable cause

arrest, the arrest must to be for a jailable offense. *See Ferguson*, 317 Wis. 2d 586, ¶ 30.

The officer in this case claimed, during his testimony, that he was investigating an OWI and burglary, though he admitted that he wrote the report as a straight OWI investigation once he learned that Mr. Wilson lived in the home and had every right to be in his own garage. (42:17; App. 141). On these facts, neither offense justified the officer's entry into the curtilage of Mr. Wilson's home.

1. The OWI in this case cannot justify warrantless entry.

The circuit court found that the officers had probable cause to arrest Mr. Wilson for OWI during their conversation with him next to the garage's side door. (43:14; App. 116). The officer testified that he didn't know anything about Mr. Wilson's driving record before entering the backyard. (42:27; App. 151). Therefore, he did not know whether the OWI he was investigating was a civil, nonjailable first offense OWI or a jailable subsequent OWI.

This fact pattern mirrors that of *Welsh*, wherein "the police conducting the warrantless entry of [the petitioner's] home did not know that the petitioner had ever been charged with, or much less convicted of, a prior violation for driving while intoxicated." *Welsh*, 466 U.S. at 747, n. 6. Therefore, it must be assumed that "at the time of the [entry] the police were acting as if they were investigating and eventually arresting for a nonjailable traffic offense that constituted only a civil violation under the applicable state law." *Id*. Therefore, even if the

officer had probable cause to believe Mr. Wilson had committed an OWI, he could not enter Mr. Wilson's home to make an arrest.

2. The facts do not support probable cause for a trespass or burglary.

The circuit court erroneously found probable cause to believe that a trespass or burglary was taking place. (43:13; App. 115). The evidence presented by the state was inadequate to establish probable cause to arrest—at best, it established reasonable suspicion. The shortcoming of the evidence is most clear when one engages in a simple thought experiment: if the officers simply stood in the alley behind Mr. Wilson's home until he came out and gathered no more evidence, could they arrest him for trespass or burglary? The answer, clearly, is "no," because the level of evidence available to the officers at the time of the intrusion could not, on its own, sustain a valid arrest.

The circuit court's probable cause finding relied on the following evidence: "[t]he SUV is parked on this parking slab," it is "parallel with the garage," the "tailgate is open," the "car is running," the caller said the driver "jumped the locked fence to enter the rear gate," and the "SUV listed to someone who did not live at that address." (43:13; App. 115).

First of all, the court's findings that the gate was locked and that the driver jumped the fence were not correct. There was no evidence presented that the gate was ever locked, only that it was latched. According to the officer, the caller said the driver "had to climb onto the fence to open the fence," but

did not say that he picked a lock or damaged the door. (42:14; App. 138). A gate on a standard, six-foot-tall, picket, privacy fence is likely to have an unsophisticated locking mechanism. Common sense dictates that the gate has a latch of some kind and the latch either opens from both sides or only opens from one side. The fact that Mr. Wilson reached over the fence to unlatch it indicates that he was familiar with the latch, not that he was illegally breaking into the fenced-in yard. At the 00:26 mark of the officer's body cam video, the latch can briefly be seen attached to the inside post of the gate. (50 at 00:26; App. 180). The officer testified to this very fact on the stand, saying that the "latch is somewhere on that vertical post that is adjacent to the tan garage" and "would end up being [on] the inside once the gate would swing shut." (42:29-30; App. 153-54). The latch does not appear to open from the outside, and the officer agreed with trial counsel's claim that "if someone wants to go in that yard and the gate is locked,[1] even if they are the homeowner, they would have to reach over somehow to unhook it." (42:30; App. 154).

The court also relied on the facts that "[t]he SUV is parked on this parking slab," it is "parallel with the garage," the "tailgate is open," and the "car is running." (43:13; App. 115). The manner in which the car is parked should not arouse suspicion. The officer's body cam clearly shows that there are other cars parked in the alleyway that are next to, rather than inside of, their garages, either parallel to the

[1] Note that trial counsel appears to have misused the word "locked" here where, relying on the context of his statement, he seemed to mean something akin to "latched."

garage or the garage door, depending on what the home's space permits. (*See*, *e.g.*, 50 at 17:02, 17:13, 17:14; App. 182-84).

This leaves the officer with three concerns, none of which support probable cause to *arrest* for burglary: possible OWI based on the driving, the car listed to a different address, the car's engine was left running, and its tailgate was left open. The intoxicated driving does not add to the probability that Mr. Wilson was engaged in a trespass or burglary. It's clear that the officer did not know what to think of the other two facts. Once he arrived at the residence, he "observed the back fence of this residence was also ajar," looked inside the vehicle, and "called the caller back with the information that our dispatch center provided." (42:13; App. 137). The officer did not testify that he was concerned for anyone's safety and did not hear any sounds coming from the garage that would indicate an ongoing burglary. Moreover, the overhead door of the garage was closed, which weighs against the belief that a burglary was ongoing.

If the officers had waited for Mr. Wilson to return to his car, they could not have arrested him for burglary based on those facts because those facts do not establish probable cause to arrest. Therefore, the office did not have probable cause to enter the curtilage of Mr. Wilson's home to arrest him.

E. Even if they had probable cause to arrest Mr. Wilson, there were no exigent circumstances that warranted the officers' unlawful entry.

In dealing with the warrantless entry of a home, an exigency is not created merely because there is probable cause to believe that a serious crime has been committed. *Welsh*, 466 U.S. at 753. The Fourth Amendment also requires proof of exigent circumstances. *Weber*, 372 Wis. 2d 202, ¶ 19. The basic test to determine whether exigent circumstances exist is an objective one: "Whether a police officer under the circumstances known to the officer at the time reasonably believes that delay in procuring a warrant would gravely endanger life or risk destruction of evidence or greatly enhance the likelihood of the suspect's escape." *Smith*, 131 Wis. 2d at 230.

"There are four well-recognized categories of exigent circumstances that have been held to authorize a law enforcement officer's warrantless entry into a home: 1) hot pursuit of a suspect, 2) a threat to the safety of a suspect or others, 3) a risk that evidence will be destroyed, and 4) a likelihood that the suspect will flee." *Weber*, 372 Wis. 2d 202, ¶ 18.

The circuit court found the entry was "justified by exigent circumstances of a hot pursuit of a fleeing suspect who had committed jailable offenses," and there was no evidence presented to support the other forms of exigent circumstances. (43:8; App. 110). The likelihood that Mr. Wilson would flee, in retrospect, is

low because he was in his home and the police could easily prevent him from entering his car.

The idea that the "hot pursuit" of a suspect can, in certain circumstances, justify a warrantless arrest in the suspect's home was made prominent by *United States v. Santana*, 427 U.S. 38 (1976). There, police sought to arrest Santana on her own front yard, but she ran into her home to avoid being arrested. *Id*., 40 The officers entered her home and arrested her anyway. *Id*., 41. The Court held that "[t]he fact that the pursuit here ended almost as soon as it began did not render it any the less a hot pursuit sufficient to justify the warrantless entry into Santana's house." *Id*., 42-43. Central to the holding in *Santana* is the obvious fact is that Santana knew the police were after her when she tried to hide in her home.

In contrast, in *Welsh*, in which the defendant did not know that the police were after him, the Court found the claim of hot pursuit "unconvincing because there was no immediate or continuous pursuit of the petitioner from the scene of a crime." *Welsh*, 466 U.S. at 753. Although probable cause existed to arrest Welsh, the Supreme Court concluded that "the warrantless entry into Welsh's home violated the Fourth Amendment because the police did not establish the existence of exigent circumstances." *State v. Larson*, 2003 WI App 150, ¶ 19, 266 Wis. 2d 236, 668 N.W.2d 338 (*citing Welsh*, 466 U.S. at 753).

In *Larson*, the officer visited Larson at home in response to multiple reports of a drunken driver that provided Larson's license plate number and address.

Larson, 266 Wis. 2d 236, ¶ 2. The officer knocked on Larson's door, and when Larson opened it, the officer immediately "placed his foot across the threshold of the doorway" so the door could not slam shut. *Id.*, ¶ 3. While speaking to Larson, the officer developed probable cause to believe that Larson was intoxicated, so he entered the apartment and placed Larson under arrest. *Id.*, ¶ 4.[2] The court found the arrest unlawful, saying, "even if we assume probable cause to arrest existed, the State has not demonstrated that exigent circumstances were present that would justify a warrantless entry." *Id.*, ¶ 17.

This case is more like *Welsh* and *Larson* than it is like *Santana*. In this case, as in *Welsh* and *Larson*, Mr. Wilson had no reason to believe he was being pursued by police, and there was "no immediate or continuous pursuit of the petitioner from the scene of a crime." *Welsh*, 466 U.S. at 753.

Moreover, none of the other considerations relevant to exigent circumstances were present. Even if there was probable cause to believe this was a trespass or burglary, the state presented no evidence that the officer was concerned for the life and safety of anybody in the house. There was no risk that evidence would be destroyed, and it was no more

[2] The court distinguished *Larson* from *Santana*, saying that while Santana was in her front yard when the police came by to arrest her, Larson was in a private place before the police came a' knocking. *Larson*, 266 Wis. 2d 236, ¶ 13. In *Larson*, the court determined that at the time the officer placed his foot across the threshold of the doorway, he did not have the requisite level of probable cause to arrest. Id.

likely that the suspect would flee if the police simply waited for him to come out of the garage and back to his car, which he had left running.

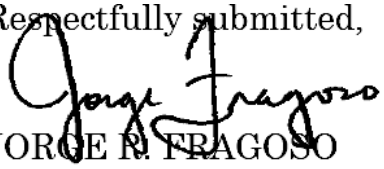
The officers clearly could not arrest Mr. Larson for trespass or burglary based on the evidence available at the time they entered the curtilage of his home. Even if they had reasonable suspicion to conduct an investigatory stop, that kind of stop cannot be conducted in the curtilage of Mr. Wilson's home. Therefore, the proper course of action would have been to park their police squad in such a way that blocked in Mr. Wilson's vehicle and to wait a few minutes to see if he came out or to try to make contact with the homeowner through the front door. However, based on these facts, police lacked exigent circumstances to enter Mr. Wilson's curtilage.

CONCLUSION

For the reasons stated above, Mr. Wilson asks the court to overturn the circuit court's decision denying Mr. Wilson's suppression motion, to vacate the judgment of conviction, and to dismiss the charges against Mr. Wilson with prejudice.

Dated this 9th day of October, 2020.

Respectfully submitted,



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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,456 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 9th day of October, 2020.

Signed:

JORGE R. FRAGOSO
Assistant State Public Defender

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 9th day of October, 2020.

Signed:

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APPENDIX

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